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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894

Nos. 783, 784 and 795

ALFRED CLARKE, PLAINTIFF IN ERROR,

vs.

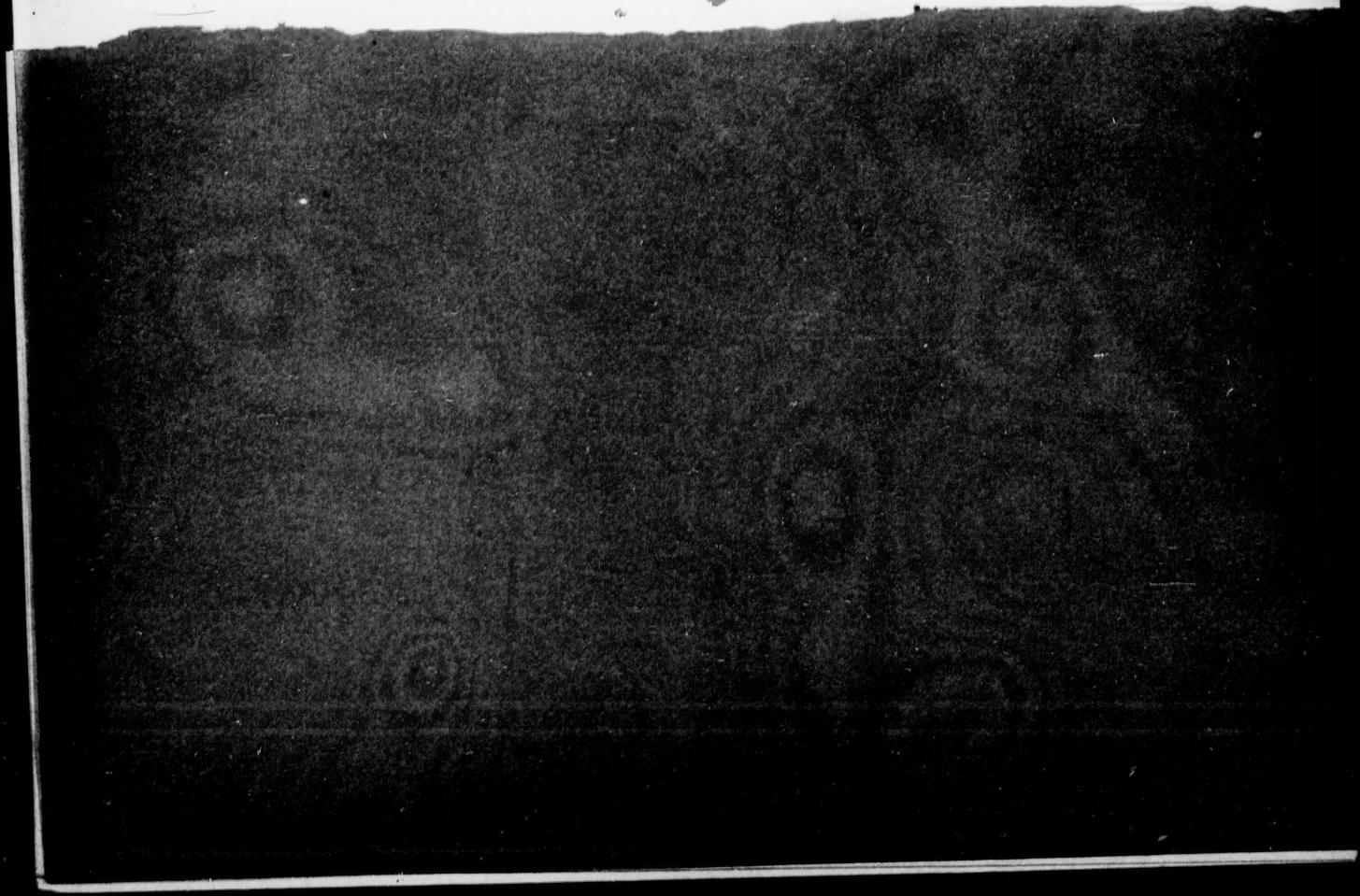
J. J. McDADE, DEFENDANT IN ERROR.

POINTS AND AUTHORITIES FOR THE PLAINTIFF.

CLARA S. FOLTZ,

Attorney for Plaintiff.

San Francisco, September *1894*



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OCTOBER TERM, 1894.

No. .....

ALFRED CLARKE, PLAINTIFF IN ERROR,

vs.

J. J. McDADE ET ALS., DEFENDANTS IN ERROR.

STATEMENT.

The case below was habeas corpus.

Clarke being imprisoned in violation of the XIVth Article, United States Constitution, applied to a United States District Judge on Oct. 20th, 1893, for a writ of habeas corpus under Sections 763–766, Revised Statutes of the United States, and on Oct. 21st, 1893, he applied to Judge Gilbert of U. S. Circuit Court for a writ of heabeas corpus under the first clause of § 763, R. S. U. S.

After these applications, and in direct violation of Section 766, R. S. U. S., the State proceeded to imprison him.

He then, on October 19th, 21st, 24th, and November 7th, 1893, applied to a State Court (the Superior Court) for a writ of habeas corpus; the writ was issued, and delivered to the Sheriff.

The Sheriff was bound to show his commitment; he does not do so in three cases.

Sec. 4188, Pol. Code.

He serves the writ *on the prisoner* (see Tr. , p); and on this return, utterly invalid, the Court discharges the writ and *remands the prisoner*.

A more absurd use, a greater abuse of this great writ, would be hard to describe.

The judgment of remand is in direct opposition to §§ 1485, 1495 and 1505 of Penal Code of California.

There are two transcripts, Nos. and before this Court relating to the same imprisonment.

In October, 1893, Judge Walter H. Levy was absent and Judge James E. Murphy (of Del Norte), was presiding in his stead.

Judge Murphy undertook to punish Alfred Clarke for contempt. Clarke denied his jurisdiction because he was never served with summons or any legal process in the action (and other reasons). Judge Murphy overruled these objections, and Clarke filed a verified answer denying all the facts charged against him, and demanded a trial by jury under Sec. 7 of Art. 1, Cal. Const.

A contempt proceeding is a criminal action. 99 Cal., 360.

Judge Murphy denied the jury and committed Clarke for contempt. Being thus in custody Clarke applied to Judge Seawell (Tr. , p). Being remanded, he applied to Judge Morrow. Not obtaining speedy relief, Oct. 24th, 1893, he applied to Judge Hebbard, application denied; on Oct. 24th, 1893, he applied to Judge Daingerfield (same Tr. , p.). Being again remanded, he applied to Judge Sanderson (Tr. , p.). Being remanded, he applied to Judge Coffey, who bailed him for three days and remanded him on Nov. 7th, 1893. On Nov. 6th, 1893, by leave of Judge Coffey he applied to Judge S. Bilcher and Hunt for bail. Bail denied. On Nov. 4th, 1893, he applied to Judge Wallace, no answer received. On Nov. 7th, he applied to Judge Troutt, and was bailed for one day, on Nov. 8th, 1893, he was remanded by Judge Troutt (Tr. , p.), and was again remanded. The commitment made by Judge James E. Murphy is not contained in the records in the Clerk's office. It is not on file. It never has been filed.

On Oct. 21st to 24th, he made three applications to the Supreme Court, all were denied, and bail denied.

The transcripts do show that three out of the four remands were made without any commitment being produced, or any authority for the imprisonment being shown. These transcripts show that, by the action of the four Judges above named, Alfred Clarke was imprisoned, and denied bail, from October 19th to November 8th, 1893—all in violation of the Constitution and laws of the United States.

If there be any difference between a suspension of the writ and the denial of the remedy, the writer has not discovered it.

The invented rule of comity of the Judges would totally destroy this great historic writ. We show hereunder three decisions which condemn the comity rule. But if the comity rule has any value, why not apply it so as to enforce and not to destroy the cases of Bowman and Chute, hereunder cited.

Re Smith, 33 Pac. Rep., 958, shows how a judgment for contempt should be enforced and executed:

"If the Court adjudges a party guilty of contempt, the clerk of the Court, in order to imprison the party, should place in the hands of the sheriff or jailer a certified copy of the judgment or order of commitment with the seal of the Court attached."

In *Re* Parr, 41 Kansas, 281;

21 Pac. Rep., 273.

Seal required.

Secs. 152–3, C. C. P.

This was not done, but the Judge signed the paper himself, and made it, not the mandate of the law, but the personal and arbitrary order of Jas. E. Murphy.

The commitment was not made in the name of the People, was not sealed, was not made by the clerk, was signed by the Judge only. (Jas. E. Murphy of Del Norte). It was never filed in the clerk's office, and was denied the jurisdiction of the Court to make it. As soon as he was arrested on Oct. 19th, 1893, he applied to Judge Seawell for habeas corpus and bail. Bail was denied. Judge Seawell remanded him, Oct. 21st. Same with Judge Daingerfield's remand, Oct. 23d. Mr. Clarke, on Oct. 20th, applied to United States District Judge Morrow, and on Oct. 21 to United States Circuit Judge Gilbert for a writ of habeas corpus under the first clause of § 763, R. S. U. S. He applied Oct. 20th. 21st, 23d and 24th, (1893) to the State Supreme Court for habeas corpus. The Sup. Court denied these four applications. He applied to Judge Hebbard Oct. 21st, to Judge Sanderson Oct. 24th. Judge Sanderson transferred the case to Judge Murphy, and he dismissed the writ on Oct 26th. Mr. Clarke applied to Judge Garber Oct. 27th, to Judge Wallace on Nov. 4th, to Judge Coffey Nov. 4th. Judge Coffey bailed petitioner till the 7th of Nov., and then denied writ. Judge Seawell on Nov. 7th denied writ of error and denied a writ of habeas corpus. On same day Judge Garber denied writ of habeas corpus. On Nov. 7th Judge Troutt granted writ habeas corpus, bailed petitioner one day and remanded him on Nov. 8th. On Nov. 6th Judge Bell and Judge Hunt denied bail. Judge D. J. Murphy of San Francisco was absent most of the time and was not applied to. Having thus exhausted the judicial power at San Francisco, Mr. Clarke was obliged to bend to the irresistible force of the State, and on Nov. 8th, 1893, he surrendered to Judge James E. Murphy. On Nov. 17th, 1893, he gave up his schedule to Judge Jas. E. Murphy. This schedule so obtained could not be used under Lazzarone *vs.* Oishei, 21 N. Y., Supp. 272; but it was used, and thus was the XIVth Article of the Constitution violated.

There are many strange incidents connected with this case which are not in the due course of judicial administration, and we claim that these incidents are exceptional to such an extent as to deviate from due process of law.

Alpha. There are 12 local Judges. Why should a stranger be brought miles to hear this matter?

Beta. Why was this imprisonment enforced during the absence of the Judge who discharged Chute? (See page of this brief).

Gamma. Why did the Judges invent the infamous rule of comity of the Judges in opposition to the Chute and Bowman cases? (See pages , , of this brief).

Delta. Why did six Judges deny Clarke bail, and yet two Judges bailed him? (Four days).

Epsilon. Soon Hing was bailed by our Supreme Court, (see 118 U. S., 356) pending his writ of error in this Court. Why was his right denied to Clarke?

The Robb decision (111 U. S., 625) one of the most valuable of the decade of 1880 to 1890, could not have been given if the denial of bail had been enforced against Robb.

Mr. Robb did our country a great service by raising that question, and this august tribunal gave a luminous decision, which shall like Antares pass through all the ages of the future.

Clarke honestly doubted the jurisdiction of Judge Jas. E. Murphy just as Robb doubted the power of Judge Wilson. Robb was accorded bail along the whole line of action. Clarke was denied bail persistently and repeatedly. And all this was done in the teeth—yes, in bold defiance of an Act of Congress.

Sec. 766, R. S.

"The finding in contempt cases is not conclusive."

99 Cal., 527.

Zeta. Why was the District Attorney shunted off the track, (71 Wis.,) and Warren Olney and his aids allowed to wear the purple robes of office?

Eta. Why was the writ granted Carroll (34 Pac. Rep., 518) and denied Clarke?

Theta. Why did Shortridge (99 Cal., 527) get his writ of review, while Clarke was denied the same remedy on Dec. 23d, 1894?

Plaintiff in error insists that under §§ 1977–1979, R. S. U. S. he is entitled to the same judicial remedies as other citizens, and these rights have been, and are, denied him. His application for writ of error, sharply denied by presiding Judge Sanderson on Nov. 7th, 1893. Three petitions for habeas corpus denied by

Supreme Court, Oct. 24th, 1893. Petition for prohibition denied Nov. 23d, petition for review denied Dec. 23d, 1893, both by the Supreme Court.

Plaintiff in error insists that under the ruling in 113 U. S., 27, and *Re* Bonner, 14 S. C. R., 326, he is entitled to a full, fair and equal administration of the law. Prohibition was granted in 35 Pac. Rep., 551. It has been denied to him. On July 27th, 1894, plaintiff applied to the Chief Justice of our Supreme Court to allow a writ of error, on the denial of the writ of habeas corpus on Oct. 24th, 1893. The Chief Justice refused to allow the writ, and told plaintiff to apply to a Justice of this Court.

It was said at the opening of the Circuit Court of Appeals in San Francisco on June , "that Justice delayed is Justice "denied." That apophthem fits our case.

The Legislature, in 1867, were advised by Gov. Haight not to accept the XIVth Article; they took his advice, and ever since the XIVth Article has been a drug in our Courts. They don't comprehend its Justice and beauty, and they give it the slightest kind of attention.

This case illustrates the above statement. Of necessity the ultimate and final decision of any federal question must lie in this Court. *A fortiori*, every suitor having a federal question must have access to this Court. To give effect to this right § 766, R. S., makes void subsequent proceedings in the State tribunals. Plaintiff in error invoked this Act of Congress by his applications to Judges Morrow and Gilbert on Nov. 20th and 21st, 1893. This matter was shown to the Superior and Supreme Courts repeatedly, and these Courts deliberately and repeatedly ignored these laws of Congress and the XIVth Article.

In this case three Judges—namely, Judge Seawell, Judge Daingerfield and Judge Troutt—remanded the petitioner, and denied him bail. This was done on a void commitment, not running in the name of the People, and otherwise void. The name of the People is indispensable.

Forbes *vs.* Darling, 91 Mich., 621;
54 N. W. R., 387;
McLendon *vs.* Fenn, 22 S. W. R., 202;
Re Rohe, 5 Ark., 105;
Choate *vs.* Spencer, 32 Pac., 551;
Lazzarone *vs.* Oishei, 21 N. Y., Supp. 272;
Insurance *vs.* Hallock, 6 Wall, 559;
Brewster *vs.* Norfleet, 225 S. W. R., 226.

The Judges appeared to hold that any ruling made by any of them, had the force of law, because it was a decision and the comity of the Judges forbade any member of the Court to underrun, overrule or reverse a ruling made by another member of the Court. It is evident that such a rule would destroy the efficacy of the writ of habeas corpus.

Three of our Judges, upon full consideration, have held exactly the reverse.

We quote from *Re* Bowman:

A QUESTION OF DELICACY.

"Another question of some delicacy was suggested on the argu-
"ment as to the inexpediency of any interference by one depart-
"ment of the Court with process of contempt issued out of another
"department."

"But it is sufficient to say of this suggestion that the issuance of
"a writ of habeas corpus is not a matter of discretion."

"The Court or Judge to whom a proper application is made is
"bound, under a penalty, to issue the writ.

"There is no alternative and there should be none."

"Questions involving the right of personal liberty ought not to
"be made subservient to considerations of mere expediency. A
"party who is unlawfully imprisoned has a right to his discharge;
"and for that purpose may apply to the Supreme Court, or any
"Justice thereof, or to the Superior Court, or any Judge thereof;
"and upon each and every of these Courts and Judges the 'Habeas
"Corpus Act' confers co-extensive jurisdiction, not only to issue
"the writ, but to hear and determine the same. Courts and Judges
"may feel a just and natural reluctance to review the judicial
"determinations of other Courts and Judges of concurrent juris-
"diction; and the law, in general, gives them no authority to do so.
"But on Habeas Corpus, it is the right of the party imprisoned to
"have the lawfulness of his imprisonment determined, and it is
"the corresponding duty of the Judge before whom such writ is
"made returnable to exercise, to the full, the jurisdiction conferred
"on him by statute.

RIGHT OF PERSONAL LIBERTY SCORED.

"He has no right to hesitate or shirk the responsibility of a
"conscientious and independent decision, from a feeling of defer-

"ence and respect, however deserved; for the Court or Judge "whose acts are called in question.

Ex parte Bowman on Habeas Corpus.

San Francisco Law Journal, July 22nd, 1893.

Richard Chute, committed by Judge Wallace, Sept. 24th, 1891, was discharged by Judge D. J. Murphy. The opinion was published in the Post of Sept. , 1891.

Cases cited.

People *vs.* Cassells, 5 Hill N. Y., 164;
4 Wall, 119;
71 Cal., 238;
42 Cal., 414;
5 Cal., 69;
45 Cal., 29;
69 Cal., 541;
77 Cal., 156;
29 Illinois, 330;
State *vs.* Hultz, 16 S. W., 940;
7 N. J. Law Rep.;
2 Halstead, 435;
3 Phil. Rep., 221;
86 Illinois, 243;
46 Ia., 623;
29 La., 324;
3 S. W., 369;
32 Cal., 68;
46 Cal., 152;
54 Cal., 37-65;
77 Cal., 494;
75 Cal., 415;
14 Cal., 120.

"There can, therefore be no question that the writ of habeas "corpus is the proper remedy for every unlawful imprisonment. "The ground has been assumed and asserted based upon, as I "understand, the opinion of the presiding Judge of this Court, "that no Judge of this Court has the right or authority, under the "writ of habeas corpus, to consider or question an order and judg- "ment of said Court or any other Judge thereof in committing a "person for an adjudged contempt before him.

"This question is of the greatest importance, directly attacking the "office and effect of the writ of habeas corpus. It is proper there- "fore to consider this question first, for if the position assumed be

"correct then there is but one course for me to pursue, and that is "to dismiss the proceedings and remand the prisoner."

"With a view to solve that question it is necessary to consider "to a certain extent the functions and office of this remedial writ "of habeas corpus."

"Relief from illegal imprisonment by means of this writ is not "the creature of any statute. The history of the writ is lost in "antiquity. It comes to us as a part of our inheritance from the "mother country and exists as a part of the common law of our "State. It is intended and well adapted to effect the great object "that is made a part of our Constitution, that 'no person shall be "deprived of his liberty without due process of law.'"

"Whenever the virtue and applicability of the writ has been "attacked or impugned it has been defended as the great bulwark "of liberty. And in this State, from the time of its first organiza- "tion, there has been no disposition shown to detract from its "force, but rather to add to its efficiency. Every legislative Act "of our State has been intended to prevent the writ from being "inoperative by increasing the facilities for procuring it, impos- "ing penalties for refusing to grant it or to obey it, and providing "for a speedy return and a prompt trial and discharge of the person "if not held according to law.

"The remedy against illegal imprisonment afforded by this writ, "as it was known and used at common law, is placed beyond the "pale of legislative discretion, except that it may be suspended "when public safety requires it in either of the emergencies men- "tioned in the Constitution. The provision of our Constitution on "that subject is as follows: 'The privilege of the writ of habeas "corpus shall not be suspended, unless, when in cases of rebellion "or invasion, the public safety may require its suspension.'"

Article I., Sec. 5.

"This Court may, when thereunto called, sit in judgment upon "the jurisdiction of co-ordinate Judges, when the judgments or "orders are attacked for want of jurisdiction; and it matters not what "the general powers and jurisdiction of the Court or Judge may be "if it or they act, without authority of law in the particular case, "its judgments and orders are mere nullities, not voidable, but "absolutely void, protecting no one acting under them and consti- "tuting no hindrance to the prosecution of this writ."

In the words of Mr. Justice Davis, in the case of ex-parte Mulligan.

4 Wall U. S., Sp. Ct. Rep., 119.

"It is the birthright of every American citizen when charged "with crime to be tried and punished according to law. The "power of punishment is alone through the means which the law "has provided for that purpose, and if they are ineffectual there is "immunity from punishment, no matter how great an offender the "individual may be, or how much his crimes may have shocked "the sense of Justice of the country or endangered its safety. By "the protection of the law human rights are secured."

"Withdraw that protection and they are at the mercy of wicked "rulers or the clamor of an excited people." (End of Chute).

Shortly after the Chute case, Sheriff Laumeister was committed for contempt, and was released by Judge Wallace. These three cases establish the rule, that co-ordinate Judges, must and shall deal out Justice in habeas corpus proceedings.

This judgment is not due process of law, and it clearly violates the XIVth Article.

It should be reversed.

ALFRED CLARKE, Plff.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894

No. .....

ALFRED CLARKE, PLAINTIFF IN ERROR,

vs.

J. J. McDADE, DEFENDANT IN ERROR.

STATEMENT.

The case below was habeas corpus.

Clarke being imprisoned in violation of the XIVth Article, United States Constitution, applied to Judge Wallace of the Superior Court for a writ of habeas corpus. The Court denied the writ and referred to *Re* Ahearn, No. 21,153, decided July 26th, 189 , by State Supreme Court. In the opinion Beatty, C. J. refers to four cases, viz.:

Re Ring, 28 Cal., 248;
Re Dobson, 31 Cal., 498.
Re Gibson, 31 Cal., 621;
Re Brown, 32 Cal., 49;
Sec. 1,213 of Penal Code.

We say that, in the first three cases, the report shows that the commitments did run in the name of the People. Therefore those three cases are not authority against us.

STATUTE LAW.

"The commitment must be to the following effect:

"The People of the State of California to the sheriff of the county of " * * *.

Sec. 877, Penal Code.

"All process shall issue in the name of the People."

Article VI, Section 20.

This constitution is mandatory. Doherty *vs.* Austin, 94 Cal., 608. (We quote a Tennessee case):

"All writs and other process shall run in the name of the State " of Tennessee. * * *

"Clearly the order here in question, if possessed of any virtue at " all, was a writ or other process, within the meaning of the Con- " stitution.

"It was intended to serve the purpose of a writ, or other process, " and as such it could have been valid (if so otherwise) only when " running in the name of the State of Tennessee.

"It did not so run, and for that reason it was void on its face.

"The requirement of the Constitution applies to all process, " civil or criminal, issued by any court or tribunal established by " law, having authority to issue process."

McLendon *vs.* State, April 29th, 1893, (Tenn.) 22 S. W. Rep., 202;

" The requirement is constitutional, the defect is jurisdictional."

Forbes *vs.* Darling, 94 Mich., 621; 54 N. W., 387;
Dougherty *vs.* Austin, 94 Cal., 608;
Re Rohe, 5 Ark., 105.

Also see,

Choate *vs.* Spencer, 32 Pac. Rep., 661.
Brewster *vs.* Norfleet, 22 S. W. R., 226, (Texas);
Insurance *vs.* Halleck, 6 Wall, U. S., 363.
Sec. 877, Penal Code.

We say that § 1,213 of Penal Code must be read in connection with § 877, which requires the name of the People, and with §§ 726–814–1,327–1,427–1529 of the same Code.

If § 1,213 (relied on by California Supreme Court) dispensed with the name of the People in the commitment, that would render it unconstitutional.

In *Ex-parte* Ahearn, No. 21,153, S. F. Law Journal, Aug. 2d, 189 .

The Ahearn decision cites *Re* Brown, 32 Cal., 49. We wrote to the clerk's office at Sacramento, asking "if the commitment did or " did not contain the name of the People."

We received the clerk's answer, Aug. 9th, 1894.

"Sub. , April 9th, 1866. Petition denied Jan. 9th, 1867."

From this reply we cannot discover that the point we make in the case at bar, was made in Brown's case. It certainly was not decided.

The commitment on which Clarke is held is not due process of law, because it does not run in the name of the People, and because

the Court had had no jurisdiction of the person of Clarke when the commitment was made, and he cannot be held thereunder because the XIVth Article forbids his detention

The name of the People is used in 84 Cal., p. 252. Please read. We say that it was proper, and it should have been used in this case.

The denial of the writ by Judge Hebbard on Oct. 24th, by Judge Wallace, Nov. 4th, and by Judge Coffey, Nov. 7th, was a denial of the equal protection of the law, and should be reversed.

Trans. 783 and 784 show a denial of the remedy by four other judges of the same Court.

The decision of this Court in cases 783-4 will be decisive as to these three denials. The special point presented in this case is whether a commitment not running in the name of the People is valid, or void?

On this question the States of Tennessee, Arkansas, Michigan and Texas answer, Void. The California Supreme Court answers, Valid.

The cases of Frederich, 142 U. S., p. 70, and Nishi, 149 U. S., 651, have no application to this case, because there is no valid judgment to sustain the commitment on which plaintiff in error is held. The inquiry is narrowed to the simple question of the sufficiency of a warrant destitute of the authority of the sovereign.

We respectfully ask that the judgment of denial of the writ be reversed, and the Court below be directed to discharge the prisoner.

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Atty. for Plaintiff in Error.
ALFRED CLARKE,
Joining on this Brief.